

AMENDED IN ASSEMBLY JUNE 19, 2007

AMENDED IN SENATE MAY 2, 2007

AMENDED IN SENATE APRIL 11, 2007

SENATE BILL

No. 1012

Introduced by Senator Dutton

February 23, 2007

An act to amend Sections 216, 331, 359, 361, 365, 367, 373, and 376 of, to repeal Sections 367.7 of, and to repeal Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1012, as amended, Dutton. Electrical restructuring: oversight board: power exchange.

The existing restructuring of the electrical services industry provides for the authorization of direct transactions between electricity suppliers and end-use customers and for the creation of the Independent System Operator and the Power Exchange, an incorporated public benefit nonprofit corporation. An Electricity Oversight Board is also created to, among other things, oversee the Independent System Operator and the Power Exchange, and to determine the composition and terms of service and to appoint the members of the governing boards of the Independent System Operator and the Power Exchange.

This bill would delete the Electricity Oversight Board and the Power Exchange. The bill would repeal provisions pertaining to the prescribed functions of the Electricity Oversight Board and the Power Exchange. The bill would make conforming changes to existing law by deleting

certain references to the Electricity Oversight Board and the Power Exchange.

The bill would declare that nothing in the bill is intended to preclude a reorganized Power Exchange from winding up its operations pursuant to its bankruptcy plan and Federal Energy Regulatory Commission orders.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 216 of the Public Utilities Code is
2 amended to read:

3 216. (a) “Public utility” includes every common carrier, toll
4 bridge corporation, pipeline corporation, gas corporation, electrical
5 corporation, telephone corporation, telegraph corporation, water
6 corporation, sewer system corporation, and heat corporation, where
7 the service is performed for, or the commodity is delivered to, the
8 public or any portion thereof.

9 (b) Whenever any common carrier, toll bridge corporation,
10 pipeline corporation, gas corporation, electrical corporation,
11 telephone corporation, telegraph corporation, water corporation,
12 sewer system corporation, or heat corporation performs a service
13 for, or delivers a commodity to, the public or any portion thereof
14 for which any compensation or payment whatsoever is received,
15 that common carrier, toll bridge corporation, pipeline corporation,
16 gas corporation, electrical corporation, telephone corporation,
17 telegraph corporation, water corporation, sewer system corporation,
18 or heat corporation, is a public utility subject to the jurisdiction,
19 control, and regulation of the commission and the provisions of
20 this part.

21 (c) When any person or corporation performs any service for,
22 or delivers any commodity to, any person, private corporation,
23 municipality, or other political subdivision of the state, that in turn
24 either directly or indirectly, mediately or immediately, performs
25 that service for, or delivers that commodity to, the public or any
26 portion thereof, that person or corporation is a public utility subject
27 to the jurisdiction, control, and regulation of the commission and
28 the provisions of this part.

1 (d) Ownership or operation of a facility that employs
2 cogeneration technology or produces power from other than a
3 conventional power source or the ownership or operation of a
4 facility which employs landfill gas technology does not make a
5 corporation or person a public utility within the meaning of this
6 section solely because of the ownership or operation of that facility.

7 (e) Any corporation or person engaged directly or indirectly in
8 developing, producing, transmitting, distributing, delivering, or
9 selling any form of heat derived from geothermal or solar resources
10 or from cogeneration technology to any privately owned or publicly
11 owned public utility, or to the public or any portion thereof, is not
12 a public utility within the meaning of this section solely by reason
13 of engaging in any of those activities.

14 (f) The ownership or operation of a facility that sells compressed
15 natural gas at retail to the public for use only as a motor vehicle
16 fuel, and the selling of compressed natural gas at retail from that
17 facility to the public for use only as a motor vehicle fuel, does not
18 make the corporation or person a public utility within the meaning
19 of this section solely because of that ownership, operation, or sale.

20 (g) Ownership or operation of a facility that has been certified
21 by the Federal Energy Regulatory Commission as an exempt
22 wholesale generator pursuant to Section 32 of the Public Utility
23 Holding Company Act of 1935 (Chapter 2C (commencing with
24 Section 79) of Title 15 of the United States Code) does not make
25 a corporation or person a public utility within the meaning of this
26 section, solely due to the ownership or operation of that facility.

27 (h) The ownership, control, operation, or management of an
28 electric plant used for direct transactions or participation directly
29 or indirectly in direct transactions, as permitted by subdivision (b)
30 of Section 365, or the use or sale as permitted under subdivisions
31 (b) to (d), inclusive, of Section 218, shall not make a corporation
32 or person a public utility within the meaning of this section solely
33 because of that ownership, participation, or sale.

34 SEC. 2. Section 331 of the Public Utilities Code is amended
35 to read:

36 331. The definitions set forth in this section shall govern the
37 construction of this chapter.

38 (a) "Aggregator" means any marketer, broker, public agency,
39 city, county, or special district, that combines the loads of multiple
40 end-use customers in facilitating the sale and purchase of electric

1 energy, transmission, and other services on behalf of these
2 customers.

3 (b) “Broker” means an entity that arranges the sale and purchase
4 of electric energy, transmission, and other services between buyers
5 and sellers, but does not take title to any of the power sold.

6 (c) “Direct transaction” means a contract between any one or
7 more electric generators, marketers, or brokers of electric power
8 and one or more retail customers providing for the purchase and
9 sale of electric power or any ancillary services.

10 (d) “Firewall” means the line of demarcation separating
11 residential and small commercial customers from all other
12 customers as described in subdivision (e) of Section 367.

13 (e) “Marketer” means any entity that buys electric energy,
14 transmission, and other services from traditional utilities and other
15 suppliers, and then resells those services at wholesale or to an
16 end-use customer.

17 (f) “Microcogeneration facility” means a cogeneration facility
18 of less than one megawatt.

19 (g) “Restructuring trust” means the tax-exempt public benefit
20 trust established by Decision 96-08-038 of the Public Utilities
21 Commission to provide for the design and development of the
22 hardware and software systems for the Independent System
23 Operator and that may undertake other activities, as needed, as
24 ordered by the commission.

25 (h) “Small commercial customer” means a customer that has a
26 maximum peak demand of less than 20 kilowatts.

27 SEC. 3. Article 4 (commencing with Section 355) of Chapter
28 2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

29 SEC. 4. Section 359 of the Public Utilities Code is amended
30 to read:

31 359. (a) It is the intent of the Legislature to provide for the
32 evolution of the Independent System Operator into a regional
33 organization to promote the development of regional electricity
34 transmission markets in the western states and to improve the
35 access of consumers served by the Independent System Operator
36 to those markets.

37 (b) The preferred means by which the voluntary evolution
38 described in subdivision (a) should occur is through the adoption
39 of a regional compact or other comparable agreement among
40 cooperating party states, the retail customers of which states would

1 reside within the geographic territories served by the Independent
2 System Operator.

3 (c) The agreement described in subdivision (b) should provide
4 for all of the following:

5 (1) An equitable process for the appointment or confirmation
6 by party states of members of the governing boards of the
7 Independent System Operator.

8 (2) A respecification of the size, structure, representation,
9 eligible membership, nominating procedures, and member terms
10 of service of the governing boards of the Independent System
11 Operator.

12 (3) Mechanisms by which each party state, jointly or separately,
13 can oversee effectively the actions of the Independent System
14 Operator as those actions relate to the assurance of electricity
15 system reliability within the party state and to matters that affect
16 electricity sales to the retail customers of the party state or
17 otherwise affect the general welfare of the electricity consumers
18 and the general public of the party state.

19 (4) The adherence by publicly owned and investor-owned
20 utilities located in party states to enforceable standards and
21 protocols to protect the reliability of the interconnected regional
22 transmission and distribution systems.

23 SEC. 5. Section 361 of the Public Utilities Code is amended
24 to read:

25 361. The commission shall ensure that any funds secured by
26 the restructuring trusts established for the purposes of developing
27 the Independent System Operator shall be placed at the disposal
28 of the Independent System Operator.

29 SEC. 6. Section 365 of the Public Utilities Code is amended
30 to read:

31 365. The actions of the commission pursuant to this chapter
32 shall be consistent with the findings and declarations contained in
33 Section 330. In addition, the commission shall do all of the
34 following:

35 (a) Facilitate the efforts of the state's electrical corporations to
36 develop and obtain authorization from the Federal Energy
37 Regulatory Commission for the creation and operation of an
38 Independent System Operator, for the determination of which
39 transmission and distribution facilities are subject to the exclusive
40 jurisdiction of the commission, and for approval, to the extent

1 necessary, of the cost recovery mechanism established as provided
2 in Sections 367 to 376, inclusive. The commission shall also
3 participate fully in all proceedings before the Federal Energy
4 Regulatory Commission in connection with the Independent
5 System Operator and shall encourage the Federal Energy
6 Regulatory Commission to adopt protocols and procedures that
7 strengthen the reliability of the interconnected transmission grid,
8 encourage all publicly owned utilities in California to become full
9 participants, and maximize enforceability of such protocols and
10 procedures by all market participants.

11 (b) (1) Authorize direct transactions between electricity
12 suppliers and end-use customers, subject to implementation of the
13 nonbypassable charge referred to in Sections 367 to 376, inclusive.
14 Direct transactions shall commence simultaneously with the start
15 of an Independent System Operator referred to in subdivision (a).
16 The simultaneous commencement shall occur as soon as
17 practicable, but no later than January 1, 1998. The commission
18 shall develop a phase-in schedule at the conclusion of which all
19 customers shall have the right to engage in direct transactions. Any
20 phase-in of customer eligibility for direct transactions ordered by
21 the commission shall be equitable to all customer classes and
22 accomplished as soon as practicable, consistent with operational
23 and other technological considerations, and shall be completed for
24 all customers by January 1, 2002.

25 (2) Customers shall be eligible for direct access irrespective of
26 any direct access phase-in implemented pursuant to this section if
27 at least one-half of that customer's electrical load is supplied by
28 energy from a renewable resource provider certified pursuant to
29 Section 383, provided however that nothing in this section shall
30 provide for direct access for electric consumers served by municipal
31 utilities unless so authorized by the governing board of that
32 municipal utility.

33 SEC. 7. Section 367 of the Public Utilities Code is amended
34 to read:

35 367. The commission shall identify and determine those costs
36 and categories of costs for generation-related assets and obligations,
37 consisting of generation facilities, generation-related regulatory
38 assets, nuclear settlements, and power purchase contracts,
39 including, but not limited to, restructurings, renegotiations or
40 terminations thereof approved by the commission, that were being

collected in commission-approved rates on December 20, 1995, and that may become uneconomic as a result of a competitive generation market, in that these costs may not be recoverable in market prices in a competitive market, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that these additions are necessary to maintain the facilities through December 31, 2001. These uneconomic costs shall include transition costs as defined in subdivision (f) of Section 840, and shall be recovered from all customers or in the case of fixed transition amounts, from the customers specified in subdivision (a) of Section 841, on a nonbypassable basis and shall:

(a) Be amortized over a reasonable time period, including collection on an accelerated basis, consistent with not increasing rates for any rate schedule, contract, or tariff option above the levels in effect on June 10, 1996; provided that, the recovery shall not extend beyond December 31, 2001, except as follows:

(1) Costs associated with employee-related transition costs as set forth in subdivision (b) of Section 375 shall continue until fully collected; provided, however, that the cost collection shall not extend beyond December 31, 2006.

(2) Power purchase contract obligations shall continue for the duration of the contract. Costs associated with any buy-out, buy-down, or renegotiation of the contracts shall continue to be collected for the duration of any agreement governing the buy-out, buy-down, or renegotiated contract; provided, however, no power purchase contract shall be extended as a result of the buy-out, buy-down, or renegotiation.

(3) Costs associated with contracts approved by the commission to settle issues associated with the Biennial Resource Plan Update may be collected through March 31, 2002; provided that only 80 percent of the balance of the costs remaining after December 31, 2001, shall be eligible for recovery.

(4) Nuclear incremental cost incentive plans for the San Onofre nuclear generating station shall continue for the full term as authorized by the commission in Decision 96-01-011 and Decision 96-04-059; provided that the recovery shall not extend beyond December 31, 2003.

(5) Costs associated with the exemptions provided in subdivision (a) of Section 374 may be collected through March 31, 2002, provided that only fifty million dollars (\$50,000,000) of the balance of the costs remaining after December 31, 2001, shall be eligible for recovery.

(6) Fixed transition amounts, as defined in subdivision (d) of Section 840, may be recovered from the customers specified in subdivision (a) of Section 841 until all rate reduction bonds associated with the fixed transition amounts have been paid in full by the financing entity.

(b) Be based on a calculation mechanism that nets the negative value of all above market utility-owned generation-related assets against the positive value of all below market utility-owned generation-related assets. For those assets subject to valuation, the valuations used for the calculation of the uneconomic portion of the net book value shall be determined not later than December 31, 2001, and shall be based on appraisal, sale, or other divestiture. The commission's determination of the costs eligible for recovery and of the valuation of those assets at the time the assets are exposed to market risk or retired, in a proceeding under Section 455.5, 851, or otherwise, shall be final, and notwithstanding Section 1708 or any other provision of law, may not be rescinded, altered or amended.

(c) Be limited in the case of utility-owned fossil generation to the uneconomic portion of the net book value of the fossil capital investment existing as of January 1, 1998, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the additions are necessary to maintain the facilities through December 31, 2001. All "going forward costs" of fossil plant operation, including operation and maintenance, administrative and general, fuel and fuel transportation costs, shall be recovered solely from contracts with the Independent System Operator, provided that for the purposes of this chapter, the following costs may be recoverable pursuant to this section:

(1) Commission-approved operating costs for particular utility-owned fossil powerplants or units, at particular times when reactive power/voltage support is not yet procurable at market-based rates in locations where it is deemed needed for the

1 reactive power/voltage support by the Independent System
2 Operator, provided that the units are otherwise authorized to
3 recover market-based rates and provided further that for an
4 electrical corporation that is also a gas corporation and that serves
5 at least four million customers as of December 20, 1995, the
6 commission shall allow the electrical corporation to retain any
7 earnings from operations of the reactive power/voltage support
8 plants or units and shall not require the utility to apply any portions
9 to offset recovery of transition costs. Cost recovery under the cost
10 recovery mechanism shall end on December 31, 2001.

11 (2) An electrical corporation that, as of December 20, 1995,
12 served at least four million customers, and that was also a gas
13 corporation that served less than four thousand customers, may
14 recover, pursuant to this section, 100 percent of the uneconomic
15 portion of the fixed costs paid under fuel and fuel transportation
16 contracts that were executed prior to December 20, 1995, and were
17 subsequently determined to be reasonable by the commission, or
18 100 percent of the buy-down or buy-out costs associated with the
19 contracts to the extent the costs are determined to be reasonable
20 by the commission.

21 (d) Be adjusted throughout the period through March 31, 2002,
22 to track accrual and recovery of costs provided for in this
23 subdivision. Recovery of costs prior to December 31, 2001, shall
24 include a return as provided for in Decision 95-12-063, as modified
25 by Decision 96-01-009, together with associated taxes.

26 (e) (1) Be allocated among the various classes of customers,
27 rate schedules, and tariff options to ensure that costs are recovered
28 from these classes, rate schedules, contract rates, and tariff options,
29 including self-generation deferral, interruptible, and standby rate
30 options in substantially the same proportion as similar costs are
31 recovered as of June 10, 1996, through the regulated retail rates
32 of the relevant electric utility, provided that there shall be a firewall
33 segregating the recovery of the costs of competition transition
34 charge exemptions such that the costs of competition transition
35 charge exemptions granted to members of the combined class of
36 residential and small commercial customers shall be recovered
37 only from these customers, and the costs of competition transition
38 charge exemptions granted to members of the combined class of
39 customers, other than residential and small commercial customers,
40 shall be recovered only from these customers.

(2) Individual customers shall not experience rate increases as a result of the allocation of transition costs. However, customers who elect to purchase energy from suppliers other than the Power Exchange through a direct transaction, may incur increases in the total price they pay for electricity to the extent the price for the energy exceeds the Power Exchange price.

(3) The commission shall retain existing cost allocation authority, provided the firewall and rate freeze principles are not violated.

SEC. 8. Section 367.7 of the Public Utilities Code is repealed.

SEC. 9. Section 373 of the Public Utilities Code is amended to read:

373. (a) Electrical corporations may apply to the commission for an order determining that the costs identified in Sections 367, 368, 375, and 376 not be collected from a particular class of customer or category of electricity consumption.

(b) Subject to the firewall specified in subdivision (e) of Section 367, the provisions of this section and Sections 372 and 374 shall apply in the event the commission authorizes a nonbypassable charge prior to the implementation of an Independent System Operator referred to in subdivision (a) of Section 365.

SEC. 10. Section 376 of the Public Utilities Code is amended to read:

376. To the extent that the costs of programs to accommodate the implementation of direct access and the Independent System Operator, that have been funded by an electrical corporation and have been found by the commission or the Federal Energy Regulatory Commission to be recoverable from the utility's customers, reduce an electrical corporation's opportunity to recover its utility generation-related plant and regulatory assets by the end of the year 2001, the electrical corporation may recover unrecovered utility generation-related plant and regulatory assets after December 31, 2001, in an amount equal to the utility's cost of commission-approved or Federal Energy Regulatory Commission approved restructuring-related implementation programs. An electrical corporation's ability to collect the amounts from retail customers after the year 2001 shall be reduced to the extent the Independent System Operator reimburses the electrical corporation for the costs of any of these programs.

1 *SEC. 11. This act is not intended to preclude a reorganized*
2 *Power Exchange from winding up its operations pursuant to its*
3 *bankruptcy plan and Federal Energy Regulatory Commission*
4 *orders.*

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